

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

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75-1409

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BURNIE McCALL,

Appellant,

-against-

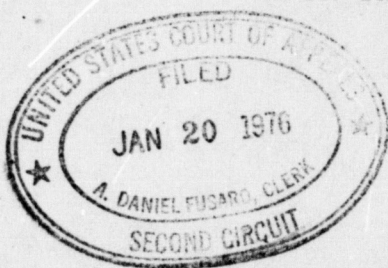
UNITED STATES OF AMERICA,

Appellee.

Docket No. 75-1409

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
BURNIE McCALL
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

RICHARD A. GREENBERG,
Of Counsel.

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DATE	PROCEEDINGS
Oct. 6	Filed Indictment
" 6	J. S. 2 made
" 6	The Court directs bench warrants be issued for both defts. Warrants issued.
Oct. 8	Deft. Ronald Williams being duly arraigned enters a plea of not guilty the court directs that all motions against the Indictment must be made by 10/16/1970. The Court sets bail in the amt. of \$25,000
" 8	Filed order that motions shall be filed in this case, U.S. v. Williams not later than 10/16/1970, etc. --CURTIN, J.
Oct. 9	Filed \$25,000 bond for deft. Williams - The Stuyvesant Insurance Co. surety
" 9	Deft. Williams present with counsel, posts bond in the amt. of \$25,000. The Court sets the following restrictions on bond-- Deft. may not leave Erie County without the permission of the Court. He is to report to the U.S. Marshal every Wednesday afternoon before 4:30 P.M. - All motions against the ind. mu. be made before 10/30/1970
Oct. 14	Deft. McCall being duly arraigned enters a plea of not guilty to the

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DATE 1970	PROCEEDINGS
Oct. 14	of bail, the Court directs that the defendant is not to leave Erie County, without the consent in writing of the court. All motion against the Ind. must be made by 10/30/1970.
Oct. 14	Filed \$25,000 bond for deft. McCall - Cosmopolitan Mutual Ins. Co., surety deft. and wife Hattie McCall's
" 16	Filed defendant /McCall's/application for permission of the Court for deft. McCall to reside in the city of N.Y.
" 19	Filed warrant for deft. McCall - executed 10/7/1970
Oct. 23	Filed subpoenas (D.T.) Raymond F. Ryan, served 10/16/1970
Oct. 26	Filed subpoena (D.T.) John J. Gerencser, served 10/15/1970
Oct. 28	Filed subpoena (D.T.) - Raymond F. Ryan, S.A., N.Y. York Telephone Co. served 10/21/1970
Nov. 2	Filed defendants defendants' affidavit and notice of motion for discovery & inspection, disclosure, and order dismissing the indictment, Bill of particulars, an order directing "a/k/a B", and "a/k/a Ronnie", be expunged and removed from the indictment, and etc., ret. 11/13/1970
Oct. 30	Pre-trial motions - adj. two weeks
Nov. 13	Motions for Discovery and Inspection. Adj. 12/18/1970
Nov. 19	Filed two subpoenas - Geraldine Daniels, XXXXXXX for appearance on 11/17/70 - served 11/17/70; and Geraldine Daniels, for appearance on 12/2/1970, served 11/17/70
Dec. 18	Return date for motions. No appearance by defts. Adj. until 1/8/1971
1971 Jan. 7	Filed Govt.'s response to certain pre-trial motions
Jan. 8	Return date for motions. Adj. to 1/22/1971.
Jan. 18	Filed subpoena (D.T.) Raymond F. Ryan, served 1/13/1971
Jan. 22	Filed Government's supplemental answer to certain pre-trial motions
Jan. 22	Hearing re status report. The Court orders the Govt. to make certain records available to the deft.. Adj. until 2/5/1971
Feb. 5	Filed the Govt.'s answer re order of the Ct., to make certain records available to the Defts.
Feb. 5	Hearing re status report. Defts. move for certain disclosures from Govt.. Decision reserved. Memos to be submitted within Two weeks.
Jan. 20	Filed Ct. stenographer's minutes of 10/8/1970
" 20	" " " " " 10/14/1970
Feb. 19	Status Report. Govt. turns over certain materials to defense counsel. Adj. further to 3/19/1971. For Status Report.
Mar. 19	Hearing re status report. The Court directs that the Govt. make available to defts. certain xxxx tapes and transcripts. Adj. 4/2/1971
Mar. 26	Filed Warrant - executed - 10/7/1970
Mar. 30	Filed subpoena - Geraldine Daniels served 3/24/1971
Apr. 2	Status Report. Counsel for defts. still examining certain logs. Adj. 5/14/1971
Apr. 30	Motion by deft. McCall for order that recording be made of certain testimony. Deft. to file affidavit in support of his motion by 5/4/1971. Motion then to be considered. Submitted.
May 6	The Court orders that his previous order regarding tapes, etc., shall continue.
May 10	Filed Deft. Bernie McCall's notice of motion and affidavit seeking an order directing that Atty. for deft. Harold J. Boreanaz, be permitted to record by means of a stenorette dictating machine - various tape recorded conversations which were transcribed pur. to N.Y. Supreme Court eavesdropping order, etc. ret. 4/30/71

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1971			
May 10	Filed Govt.'s affidavit in support of the Govt.'s opposition to defense counsel's written request for an order of the Court permitting the preparation of duplicate recordings of the intercepted conversations which the Govt intercepted and recorded in the above entitled case, etc.		
May 14	Hearing re status report. No appearances for defts. adj. until 6/3/71 10:00 am		
June 3	Ronnie Williams & Bernie McCall return date for motions. Motions are now ready to be filed.		
June 10	Filed defts. notice of motion and affid. for an Order directing state eavesdropping warrants be declared illegal, etc; Order suppressing use by the Govt. in the Trial, etc. of any and all information acquired through the eavesdropping warrants; for a Hearing, etc.		
July 21	Filed Government's response		
July 30	Status Report. No appearance for defts. The Court will schedule meeting with attys. early next week.		
Sept. 3	Hearing re status report. Counsel for defts Court directs oral argument be heard on 9/24/1971. of defts motions.		
" 24	Motion by defts for order that certain warrants signed by a Supreme Court Judge be declared illegal and to suppress use of material etc., Motion for hearing re. suppression motion. Court will inform attys, if testimony is required. Court sets trial for 10-12-71.		
Oct. 8	Filed six subpoenas- John J. Gerencser, Michael McCall, Bernie McCall, Jeremiah Hassett, Vincent Costanza, Florian Scibran Joseph Vaughan- served 10-7-71.		
Oct. 8	Filed subpoena (D.T.) Keyser Brothers Cadillac, Inc., served 10/7/1971		
" 12	Filed Ct. sten minutes of 9-24-71		
" 14	Filed court sten. minutes of 1-8-71, 1-22-71, 2-5-71, and 3-19-71.		
" 12	Govt. moves case for trial before Judge Curtin & Jury (no witnesses sworn)		
" 13	Trial continued with same appearances and jury - trial adj. until 10/18/71 and defense motions made in absence of jury (no witnesses sworn for trial)		
" 14	Motion to suppress argued in absence of jury		
" 15	Hearing on motion continued without jury		
" 15	Filed two subpoenas--Al Gristmacher served 10/13/71 and Melvin G. Lobbett served 10/14/71		
" 18	" subpoena--Harvey Anger served 10/14/71		
" 18	" Court Stenographer's minutes of proceedings after recess 10/13/71		

[illegible]

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

BERNIE McCALL, a/k/a "B" and
RONALD WILLIAMS, a/k/a "RONNIE"

March 1970 Session

No. C R - 1970 - 168

Vio. Title 18, U.S.C., §371
Title 21, U.S.C., §174

COUNT I

The Grand Jury charges:

That beginning on or about the 10th day of August, 1970, and continuously thereafter up to and including the date of filing of this indictment in the Western District of New York and elsewhere, BERNIE McCALL, a/k/a "B", and RONALD WILLIAMS, a/k/a "RONNIE", the defendants, and Geraldine Daniels, named as a co-conspirator but not as a defendant, and various other persons whose names are unknown to the Grand Jury, wilfully and knowingly did combine, conspire and agree together and with each other to commit offenses against the United States, to wit, to violate §174, Title 21, U.S.C., by receiving, concealing, buying, selling and facilitating the transportation, concealment and sale of narcotic drugs after the narcotic drugs had been imported and brought into the United States, knowing that the narcotic drugs had been imported and brought into the United States; all in violation of Title 18, U.S.C., §371.

OVERT ACTS

At the time hereinafter mentioned, the defendants
committed the following overt acts in furtherance of said

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conspiracy and to effect the objective thereof:

1. On or about the 10th day of August, 1970, the defendant, BERNIE McCALL, a/k/a "B", sent the co-conspirator, Geraldine Daniels, from New York City, New York, to Buffalo, New York to pick up a package from the defendant, RONALD WILLIAMS, a/k/a "RONNIE".

2. On or about the 13th day of September, 1970 the defendant, RONALD WILLIAMS, a/k/a "RONNIE", made a telephone call to the defendant BERNIE McCALL, a/k/a "B", from Buffalo, Western District of New York, to New York City, New York.

3. On or about the 14th day of September, 1970 the defendant, RONALD WILLIAMS, a/k/a "RONNIE", made a telephone call to the defendant BERNIE McCALL, a/k/a "B", from Buffalo, Western District of New York, to New York City, New York.

4. On or about the 14th day of September, 1970, the defendant, BERNIE McCALL, a/k/a "B", made a telephone call to the defendant RONALD WILLIAMS, a/k/a "RONNIE".

5. On or about the 25th day of September, 1970, the defendant, RONALD WILLIAMS, a/k/a "RONNIE", made a telephone call to the defendant BERNIE McCALL, a/k/a "B", from Buffalo, Western District of New York, to New York City, New York.

6. On or about the 25th day of September, 1970, the defendant, BERNIE McCALL, a/k/a "B", made a telephone call to the defendant RONALD WILLIAMS, a/k/a "RONNIE".

7. On or about the 26th day of September, 1970 the defendant, BERNIE McCALL, a/k/a "B", travelled from New York City, New to Cheektowaga, New York, via American Airlines, which airplane departed from LaGuardia Airport, New York City to Buffalo Greater International Airport.

8. On or about the 28th day of September, 1970 the defendant, BERNIE McCALL, a/k/a "B", travelled from Cheektowaga, New York to New York City, New York, via American Airlines, which airplane departed from Buffalo Greater International Airport to LaGuardia Airport, New York City, New York.

9. On or about the 29th day of September, 1970, the defendant, BERNIE McCALL, a/k/a "B", made a telephone call to the defendant RONALD WILLIAMS, a/k/a "RONNIE".

10. On or about the 30th day of September, 1970, the defendants BERNIE McCALL, a/k/a "B" and RONALD WILLIAMS, a/k/a "RONNIE", facilitated the transportation of approximately 138.6 grams of heroin by using the co-conspirator, Geraldine Daniels to transport said heroin from New York City to Cheektowaga, New York, Western District of New York, with the intended final destination of 43 Daisy Street, Buffalo, New York.

COUNT II

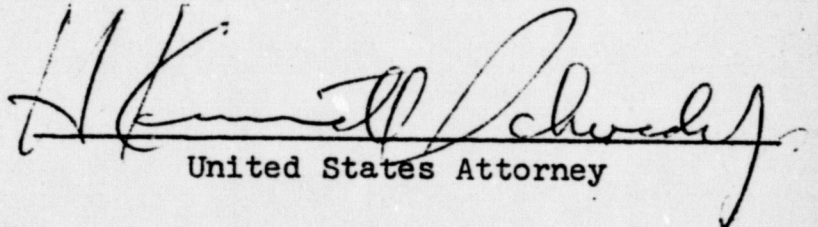
The Grand Jury further charges:

That on or about the 30th day of September, 1970, in the Western District of New York and elsewhere, the defendant, BERNIE McCALL, a/k/a "B", knowingly, wilfully and unlawfully did conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 138.6 grams of a substance or compound containing heroin, after the said narcotic drug had been imported and brought into the United States contrary to law and he then and there well knew that the said narcotic drug had theretofore been imported and brought into the United States contrary to law; in violation of Title 21, U.S.C., §174.

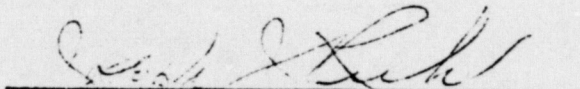
COUNT III

The Grand Jury further charges:

That on or about the 30th day of September, 1970, in the Western District of New York, the defendant, RONALD WILLIAMS, a/k/a "RONNIE", did knowingly, wilfully and unlawfully facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 138.6 grams of a substance or compound containing heroin, after the said narcotic drug had been imported and brought into the United States contrary to law and he then and there well knew that the said narcotic drug had theretofore been imported and brought into the United States contrary to law; in violation of Title 21, U.S.C., §174.


United States Attorney

A TRUE BILL:


Foreman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

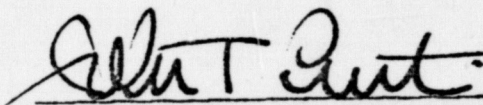
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BERNIE McCALL, a/k/a "B" and
RONALD WILLIAMS, a/k/a "RONNIE"

Defendants

Defendant Bernie McCall has submitted a motion for an order to release the names of all persons who appeared before the grand jury in the above criminal matter. The court cannot grant such a motion unless the movant has shown sufficient reason on which to base a belief that there were irregularities in the grand jury proceedings. The movant has not presented such reasons and the motion is, therefore, denied.

So ordered.



JOHN T. CURTIN
United States District Judge

DATED: June 17, 1975

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK X

UNITED STATES OF AMERICA,

PLAINTIFF,

VS

BURNIE MCCALL,

DEFENDANT.

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NO: 1970 - 163

FILED

JUN 2 1975

AT.O'C.....M.
JOHN E. ADAMS, Clerk

MOTION FOR ORDER TO RELEASE NAMES OF ALL PERSONS WHO
APPEARED BEFORE THE GRAND JURY IN THE ABOVE CRIMINAL MATTER.

COMES NOW BURNIE MCCALL, and moves the court to direct the release
of names of all persons who appeared before the grand jury in the above numbered
case.

The litigation has long been completed and no valid reason exists
for further secrecy concerning the names of those witnesses.

Witnesses and complainants who appear before the grand jury have a
right to not have there testimony divulged by the grand jury, except to the Govern-
-ment Attorneys for use in the performance of there duties. Schmidt vs U.S. 115 F2d
394 (CA 6).

Rule 6 (e) F.R.C.P.

(e) SECRECY OF PROCEEDINGS AND DISCLOSURE. Disclosure of matters
occurring before the grand jury other than its deliberations and the vote of any
juror may be made to the attorneys for the government for use in the performance of
there duties. Otherwise a juror, attorney for the government, interpreter, steno-
-grapher, operator of a recording device, or any typist who transcribes recorded
testimony may disclose matters occurring before the grand jury only when directed

by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist.....No obligation of secrecy may be imposed upon any person except in accordance with this rule.

The privilege is the witnesses and rests upon his consent.

Professor Wigmore, 8 Evidence 2362 (McNaughton Rev. 1961), asserts the privilege

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is only temporary and provisional. Permanant secrecy would be more than necessary to render the witness willing.

We note that the privilege in Rule 6, and by Wigmores reasoning, applies only to the matter occuring before the grand jury, and not to the names of witnesses before that body, especially after the litigation is complete.

REASONS FOR LIFTING THE VEIL OF SECRECY IN THE INSTANT CASE.

The veil of secrecy should be lifted to enable the defendant to determine if any of the witnesses who appeared before the grand jury in the Western District also appeared before the grand jury in the Southern District of New York which indicted the defendant for a conspiracy that completely overlaped in time the conspiracy alleged in this district.

A collateral attack upon the judgement of conviction had in the Southern District of New York is being prepared by the defendant herein, and the defendant needs these names in order to properly prepare the moving papers to set aside the conviction.

Even assuming, arguendo, that a case could be made for keeping the substance of matters occuring before the grand jury secret for an indefinite time in a case where the litigation is complete, there is no valid reason or authority in law for keeping secret the list of witnesses who appeared before the grand jury.

The mere fact that a person was a witness, or a complaining witness before a grand jury is not privileged after the litigation is acompleted.

Ex Parte Schmidt, 71 Cal 212 (1886).

Wherefore a particularised need has been shown to the court the Motion should be granted, and such other and futher relief as to the court may seem justicable.

Respectfully Submitted,

Burnie McCall

BURNIE MCCALL # 71211 - 158

POST OFFICE BOX # 1000 LEAVENWORTH, KANSAS

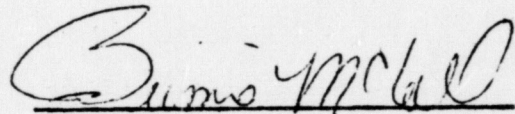
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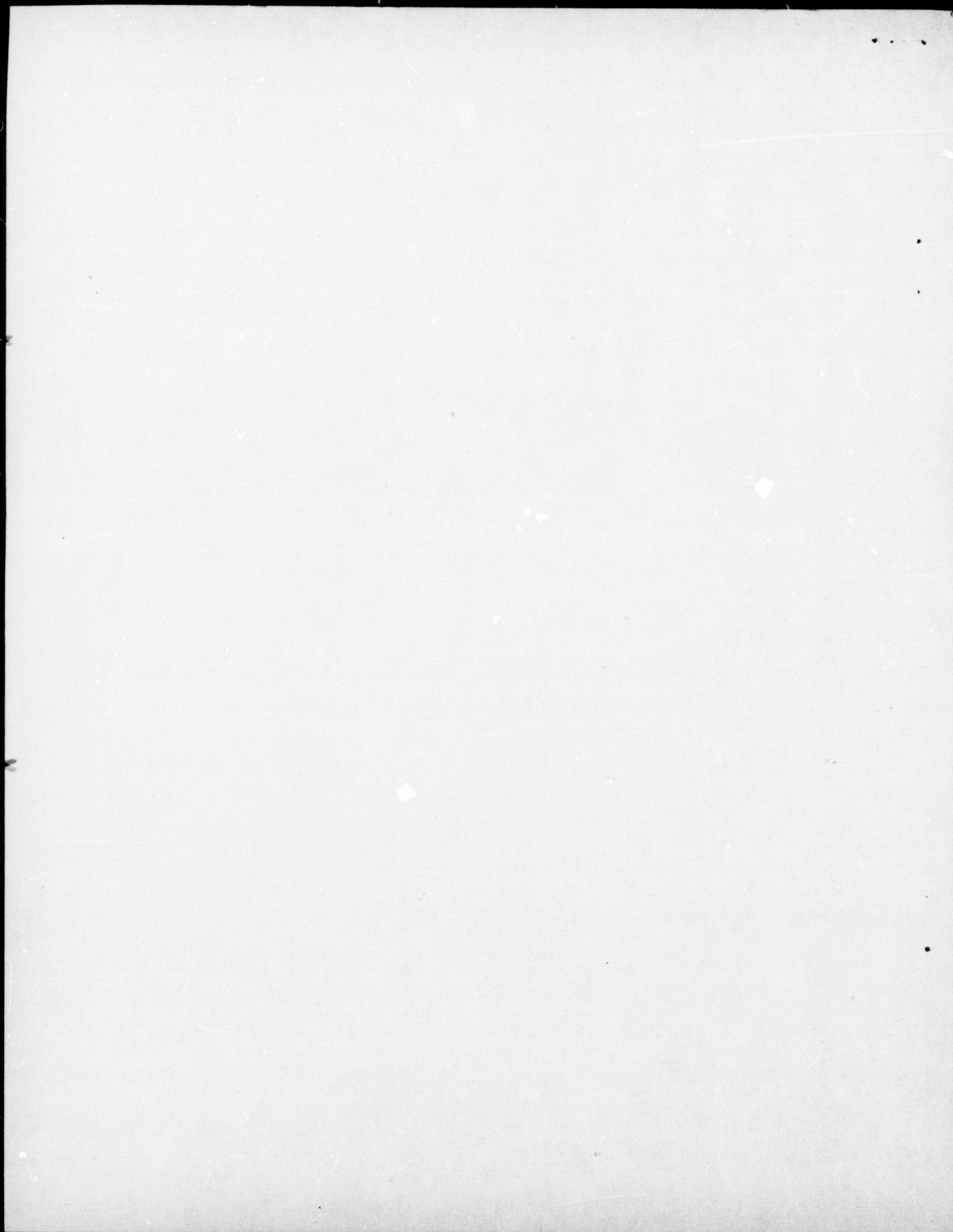
PROOF OF SERVICE

On the 28th day of May 1975 a true and exact copy of the annexed Motion was mailed to
the:

UNITED STATES ATTORNEY
WESTERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
NIAGRA SQ. BUFFALO 14202
NEW YORK

A handwritten signature in cursive script, reading "Burnie McCall", written over a horizontal line.

BURNIE MCCALL # 71211 - 158



CERTIFICATE OF SERVICE

January 20, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Western District of New York and to appellant.

Richard A. Greenberg



